

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

KEITH WENZEL, Director, Department of Insurance, State of Missouri,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. CV _____
)	
GENERAL AMERICAN MUTUAL HOLDING COMPANY, a Missouri Mutual Holding Company,)	
)	
)	
Defendant.)	

**REHABILITATOR'S EMERGENCY MOTION FOR
ENTRY OF AN ORDER APPROVING CERTAIN MATTERS
AS TO THE ACQUISITION OF GENAMERICA CORPORATION**

COMES NOW Keith Wenzel, Director of the Missouri Department of Insurance, in his capacity as Rehabilitator of General American Mutual Holding Company in rehabilitation ("the Rehabilitator"), and moves this Court for entry of an order approving certain matters as to the acquisition of GenAmerica Corporation. In support of this motion, the Rehabilitator relies upon the attached Stipulation of Facts Respecting Emergency Motion (Exhibit A hereto), and states as follows:

1. On September 17, 1999, this Court entered an order of rehabilitation respecting General American Mutual Holding Company ("GAMHC"), a Missouri mutual holding company. This order ("the Rehabilitation Order") appointed the Director of the Missouri Department of Insurance ("the Director") as the Rehabilitator.

2. GAMHC owns 100% of the stock of GenAmerica Corporation, a Missouri corporation ("GAC"), which, in turn, owns 100% of the stock of General American Life Insurance Company, a Missouri stock life insurance company ("GALIC").

3. The rehabilitation proceedings respecting GAMHC were precipitated by a liquidity crisis that befell GALIC. These events arose from GALIC's funding agreement business and are explained below.

4. Funding agreements are investment instruments which resemble short term bonds. Many funding agreements sold by GALIC to institutional customers, such as pension, mutual and money market funds, had seven or thirty-day cash-in options.

5. GALIC began issuing funding agreements in 1993 when it entered into a business arrangement with ARM Financial, Inc. ("ARM"). GALIC and Conning Corporation ("Conning," a GALIC subsidiary), respectively, formed a reinsurance and marketing relationship with ARM. The reinsurance arrangement provided for GALIC to transfer 50% of its funding agreement obligations to an ARM subsidiary, Integrity Life Insurance Company (Integrity®), but GALIC remained ultimately responsible to satisfy all required payments to the funding agreement holders. Between 1994 and 1998, GALIC issued approximately \$6.8 billion of funding agreements, one-half of which, or \$3.4 billion, was reinsured with Integrity. On information and belief, Integrity invested these funds in highly interest-rate-sensitive investments, which became difficult to sell at full value when the funding agreements were cashed in.

6. Because of these arrangements, in March 1999, Moody's Investors Service ("Moody's") downgraded GALIC's rating. In light of ARM's decision in May, 1999, to exit the funding agreement business and ARM's own ratings decline, GALIC recaptured, effective July 26, 1999, the funding agreement business it had transferred to Integrity.

7. On July 30, 1999, Moody's downgraded GALIC's rating further, citing the termination of the Integrity arrangement and losses announced by ARM.

8. Because of the downgrade in GALIC's rating, many of the funding agreement holders exercised seven or thirty-day cash-in options that were contained in the funding agreements. GALIC had set aside substantial funds to satisfy funding agreement surrenders, but such funds proved to be inadequate. Between July 30 and August 4, customers holding approximately \$4 billion in funding agreements demanded cash. This created severe pressure on GALIC's readily-available cash to meet the surrender demands.

9. GALIC immediately attempted to raise the cash to satisfy the demands of its funding agreement customers through a sale of certain of its assets. By August 7, it was apparent that GALIC would be unable to sell sufficient assets to cover the funding agreement obligations without incurring losses that could adversely affect its ability to meet its obligations to all of its other policyholders. On August 10, 1999, the Missouri Department of Insurance ("the

Department") placed GALIC under administrative supervision. GAMHC then began exploring its alternative options under the oversight of the Director.

10. The ratings downgrade and the public disclosure of the problems faced by GALIC also had a negative effect on GALIC's ability to issue new life insurance business. It became clear that, absent a development that created confidence in the market, GALIC's life insurance business also would be at risk of deterioration. While this would not immediately threaten GALIC's ability to perform under its existing policies, it would result in a reduction in the overall value of the enterprise, thereby diminishing the return for GAMHC's members.

11. Following the issuance of the supervision order, the Department worked closely with GALIC and GAMHC to resolve the crisis caused by the inability to satisfy the funding agreement surrenders in a fashion that would fully protect the members of GAMHC and the policyholders of GALIC. Both GALIC and the Director retained experienced investment banking advisors to provide strategic and financial advice with respect to the options. Time was of the essence, given GALIC's liquidity crisis and the attendant negative publicity.

12. GALIC's advisors recommended that the best means of preserving the value inherent in GALIC for the members of GAMHC and policyholders of GALIC was a sale of GAC (together with its subsidiaries, including GALIC), and so advised the Director. GAMHC thereupon quickly assembled a sale process designed to elicit offers for the purchase of GAMHC's stock in GAC. There were many expressions of interest in response to the sale process, and an

auction developed that involved companies including Metropolitan Life Insurance Company ("MetLife").

13. In addition to an ultimate purchase of the stock in GAC, the Director also sought from the bidders an undertaking to implement interim arrangements to protect GALIC's policyholders and stabilize GALIC's funding agreement business ("Interim Arrangements"). The Interim Arrangements were to take effect in the time period prior to the closing of the sale of the GAC stock; they were necessary in order to restore confidence in GALIC, to end the liquidity crisis, and to preserve the value of GAMHC and its subsidiaries. The Director's advisors also concurred in this strategy of seeking the provision of Interim Arrangements from the successful bidder.

14. The auction process resulted in improvements in the bids, including the bid of MetLife, which improved from the standpoint of GAMHC (and its members) and GALIC (and its policyholders) in terms of, inter alia, the Interim Arrangements offered, the ultimate purchase price for the GAC stock, and limits on GAMHC's post-closing indemnification obligations.

15. The sale process culminated in the execution of a Stock Purchase Agreement between GAMHC and MetLife on August 26, 1999, as amended ("the Agreement"). GAMHC's Board of Directors approved the terms of the Agreement.

16. The Agreement anticipated that the sale of the GAC stock would take place in conjunction with rehabilitation proceedings respecting GAMHC. The Director, who was

involved in the bidding process and the negotiations, authorized the Board of Directors of GAMHC to enter into the Agreement.

17. Following entry of the Rehabilitation Order, the Rehabilitator has prepared and submitted for this Court's approval a reorganization plan respecting GAMHC ("the Reorganization Plan"), which implements the terms of the Agreement. Final consummation of the Agreement is subject to this Court's final approval of the Reorganization Plan.

18. Prior to final approval of the Reorganization Plan, the Rehabilitator seeks an order from this Court which affirms and approves certain articles in the Agreement. Specifically, the Rehabilitator seeks an order approving and affirming Articles VII, XI, XII (with the exception of ' 12.10 therein) and Sections 6.2, 6.3 and 6.4(c) of the Agreement.

19. Article VII of the Agreement, which is entitled "Interim Arrangement," obligates GAMHC and MetLife to develop for the period from the date of the Agreement through the closing date programs to provide support for GALIC's and certain of its subsidiaries' new and existing policies and a stabilization program to address the funding agreement business. The stabilization program consists of an exchange program whereby MetLife offered to each holder of a GALIC funding agreement contract the right to receive, at the holder's choice, (i) a

MetLife exchange contract or (ii) cash on October 1, 1999, in consideration for the transfer by GALIC to MetLife of assets equal to the market value of the liabilities under the pertinent funding agreements being exchanged, plus a payment of \$120 million to be transferred in three \$40 million installments: \$40 million at inception of the exchange, \$40 million 90 days after inception, and \$40 million 180 days after inception. Upon the closing of the sale of GAC stock to MetLife, and in accordance with the Agreement, MetLife will make a capital contribution of up to \$120 million to GALIC pursuant to ' 6.20 of the Agreement.

20. Article VII of the Agreement incorporates MetLife's obligation to provide Interim Arrangements, which were sought by GAMHC and the Director for the reasons described above. Article VII should be approved and affirmed by this Court because it is fair and equitable to all parties concerned. It defuses the liquidity crisis, restores confidence and stability in the GALIC business, and enhances the value of GAMHC and its subsidiaries. The payment of up to \$120 million to MetLife is fair and equitable because MetLife is undertaking a substantial obligation under Article VII and MetLife has essentially agreed to make a capital contribution of up to \$120 million to GALIC in the event the sale of GAC stock closes in accordance with the Agreement.

21. Article XI of the Agreement, which is entitled "Termination," concerns the circumstances under which the Agreement may be terminated prior to the closing date contemplated thereunder, and the parties' respective obligations upon termination, including GAMHC's obligation to pay a \$50 million termination fee to MetLife. This termination fee was

an essential part of the Agreement for MetLife, which would not have entered into the Agreement without it. All bidders who engaged in the negotiation of a purchase agreement during the process described above sought the incorporation of a substantial termination fee in any formal agreement to consummate the purchase of stock in GAC.

22. This Court should approve and affirm Article XI of the Agreement because it is fair and equitable to all parties concerned. In the setting in which GAMHC sought to sell GAC, protection to the successful bidder in the form of a termination fee was essential. A successful bidder, such as MetLife, expends significant sums on due diligence, financial advice from investment bankers, and legal advice, and needs assurances that it will be compensated in the event the transaction fails to close. In addition, a successful bidder, such as MetLife, creates significant value by establishing a floor price that must be exceeded, and defining the structure of the eventual transaction that takes place, even if the original deal does not eventually close. In addition, MetLife's obligations to provide Interim Arrangements respecting funding agreements pursuant to Article VII, ' 7.1(c) of the Agreement, are to continue, notwithstanding termination. As explained above, MetLife has undertaken a substantial obligation in this regard, and that obligation remains even if MetLife does not eventually purchase the GAC stock. Under these circumstances, GAMHC and the Director, upon the advice of their respective advisors, have determined that the \$50 million termination fee is appropriate.

23. Article XII, which is entitled "Miscellaneous," sets forth a number of provisions respecting, inter alia, future amendment of the Agreement, interpretation of its

provisions, and governing law. The Rehabilitator considers it prudent to have such interpretive provisions approved and affirmed by this Court at the outset, because they apply to and govern interpretation of Articles VII and XI, which the Rehabilitator is also asking this Court to approve and affirm. The Rehabilitator requests that this Court's approval and affirmation of Article XII not extend to ' 12.10 thereof. Section 12.10 provides for equitable relief in the form of specific performance of the Agreement, as well as injunctions to prevent breaches of the Agreement. As GAMHC is in rehabilitation and performance of the Agreement is subject to this Court's ultimate approval, approval and affirmation of ' 12.10 is inappropriate at this time. In addition, Sections 6.2, 6.3 and 6.4(c) are requested to be approved because they survive termination of the Agreement.

24. The Agreement specifies no means by which competing bids may be presented, no deadlines for their presentation and no criteria by which they are to be evaluated. The absence of any specific criteria or deadlines gives rise to the possibility that there may be interposed before this Court overbids at any time, on any number of bases, supported by any amount of information -- all of which could give rise to prospective litigation over the potential terms of any overbid and over the payment of the termination fee to MetLife. Such litigation and lack of definition concerning the overbid procedures, in addition to potentially causing significant delay and expense, could also threaten the business of GALIC and certain other subsidiaries. Prolonged litigation over the ownership of GAC could destabilize the agency network upon which GALIC's business largely depends and undermine the confidence of policyholders, potentially leading to surrenders and a slowdown in the origination of new business which, in each case,

could threaten GALIC's viability. Moreover, absent the assurance that it would be paid its termination fee in the event of an overbid, MetLife would not be willing to extend the interim protections that are critical to the survival of GALIC's business.

25. Accordingly, the Rehabilitator proposes that this Court issue an order setting forth the overbid procedures set forth in the Rehabilitator's proposed order (Exhibit A hereto). These procedures would, inter alia, set a deadline for receipt of overbids (5:00 p.m. Central Daylight Time on October 27, 1999), establish appropriate financial criteria that must be met by overbidders, require that any competing overbid must contain terms identical (except for financial terms) to those in the Agreement and exceed the purchase price in the Agreement by at least \$100 million (thereby guaranteeing that any termination fee paid to MetLife as a result of the GAC stock being awarded to an overbidder would be more than covered by the overbidder), permit MetLife to counter any overbid, provide for the Rehabilitator to make a recommendation to this Court with respect to any overbids, and direct final resolution by this Court.

26. These overbid procedures should be approved by this Court because they are fair and equitable to all parties concerned. These procedures are designed to ensure an orderly overbid process with clearly understandable requirements and an expeditious resolution, all to the benefit of GAMHC, its members, GALIC and its policyholders, and all other interested parties.

WHEREFORE, for the foregoing reasons, the Rehabilitator respectfully requests that this Court enter an order approving and affirming Articles VII, XI, XII (with the exception of ' 12.10 therein) and Sections 6.2, 6.3 and 6.4(c) of the Agreement and establishing specific overbid procedures respecting the sale of GAC stock.

Respectfully submitted,

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